

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

PERSONAL INDEPENDENCE PAYMENT

Appeal by the above-named claimant
to a Tribunal of Commissioners Commissioner
on a question of law from a tribunal's decision
dated 8 May 2024

DECISION OF THE TRIBUNAL OF COMMISSIONERS

1. This is a claimant's appeal from the decision of an Appeal Tribunal with reference BE/3302/23/02/D.

2. Leave to appeal was granted on 21 January 2026. For the reasons we give below, we allow the appeal. We set aside the decision of the Appeal Tribunal under Article 15(8)(a) of the Social Security Order (NI) 1998. As further findings of fact are required, we refer this appeal back for consideration before a freshly constituted Tribunal.

Directions

3. The members of the Tribunal who reconsider the appeal should not be the same as those who made the decision which has been set aside.

4. The fact that this appeal has succeeded on a point of law carries no implication as to the likely outcome of the Appellant's appeal against the Department's decision, which is a matter for the new panel.

5. The new Tribunal is not bound in any way by the decision of the previous Tribunal. It will not be limited to the evidence and submissions before the previous Tribunal. It will consider all aspects of the case entirely afresh and make its decision in light of all that is before it.

6. The Department is directed to provide details of any subsequent claims to Personal Independence Payment (PIP) and the outcome of any such claims to the Appeal Tribunal to which this appeal is being referred. The Appeal Tribunal will take any evidence of subsequent claims to PIP into account in line with the principles set out in C20/04-05(DLA).

7. The parties should send any further evidence or submissions on which they seek to rely to the Appeals Service within six weeks of the date of issue of this decision.

REASONS

The background

8. The claimant had previously been in receipt of PIP. Her original award was the standard rate of both the care and mobility components from 31 January 2018 to 4 December 2021. This award was extended to 4 September 2022 during the COVID-19 pandemic by a decision made on 7 December 2021. An AR1 review form was issued, and a completed form was received in the Department on 8 December 2021 citing diabetes, depression, anxiety, right knee injury, eczema, degenerative macular disease and hysteroscopy. The claimant attended an assessment on 27 July 2022, which was undertaken by telephone. On 10 August 2022 the Department's decision-maker superseded the earlier decision and awarded 11 points in respect of the daily living component of PIP but 0 points in respect of the mobility component. As such, the claimant was awarded the standard rate of the daily living component of PIP from 10 August 2022 to 21 July 2026.

9. The claimant asked for a mandatory reconsideration of that decision on 23 September 2022. On 2 November 2022 the Department revised the decision dated 10 August 2022, awarding the same points but changing the award from a fixed term to an ongoing award. The decision was notified to the claimant on 2 November 2022. On 7 December 2022 the Department received an appeal against the decision. The appeal was out of time but was accepted in the interests of justice. A Tribunal hearing which proceeded in the claimant's absence on 31 July 2023 was set aside in the interests of justice.

The Appeal Tribunal's decision

10. The appeal was then considered at an oral hearing attended by the claimant (by video link) and her representative on 8 May 2024. The Tribunal consisted of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The Tribunal had documentary material before it consisting of the Department's submission, the claimant's GP notes and records, a submission from the claimant's representative and a supplementary response from the Department. The Tribunal also heard oral evidence from the claimant and oral submissions from her representative in a hearing lasting 40 minutes.

11. The decision of the Tribunal was to disallow the claimant's appeal, upholding the decision of the Department of 10 August 2022 (as revised on 2 November 2022) in respect of both the daily living and mobility components of PIP. Thus, the Tribunal decided the claimant was entitled to the standard rate of the daily living component from 10 August 2022 for an ongoing period, awarding 11 points, and that she was not entitled to any rate of the mobility component, with 4 points being awarded. In respect of the daily living activity of washing and bathing, the Tribunal accepted the claimant required aids to get into and out of a bath or shower, which carries an award of 2 points (descriptor 4(b)), but made the award of 2 points on the basis of descriptor 4(c). This was because it accepted prompting was required in respect of this activity and it was on this basis that the Department had made its award. The Tribunal therefore decided 4(c) was the appropriate descriptor.

The application for leave to appeal

12. The claimant applied to the LQM for leave to appeal from the decision of the Appeal Tribunal but leave to appeal was refused by a determination issued on 1 August 2024. On 12 August 2024 the claimant made an in-time application to the Social Security Commissioners for leave to appeal.

13. The claimant's original grounds of appeal were that the Tribunal had misinterpreted the law, in particular, reference was made to the decision in *CPIP/2094/2015* and that whether a claimant satisfies descriptor 4(e) must be determined by reference to an *unadapted* bath or shower. However, it was submitted in the grounds that the panel appeared to have made their decision by considering the claimant's ability to use an *adapted* bath, i.e. a bath with a bath board and rails and therefore the Tribunal's decision was erroneous in law.

14. Ms Patterson of Decision Making Services (DMS) responded on behalf of the Department on 6 September 2024. She did not support the application for leave to appeal and submitted that the Tribunal had identified the bath board and grab rails as aids rather than as adaptations to the bath and that it was correct to do so. Her view was that the Tribunal's decision did not involve any error of law.

15. A face-to-face oral hearing of the leave application was held on 28 October 2025. This was attended by the claimant, her representative, Ms Heatherley from Law Centre NI, and Ms Patterson on behalf of the Department. Leave to appeal was subsequently granted on 21 January 2026. This included (but was not limited to) the grounds submitted by the claimant's representative during the oral hearing regarding whether an aid (or aids) had the effect of causing the bath to become an adapted bath and whether the Appeal Tribunal had applied the wrong test in respect of daily living activity 4 washing and bathing and in particular descriptor 4(e) "*Needs assistance to be able to get in or out of a bath or shower*".

16. A direction that the appeal involved a question of law of special difficulty and should be dealt with by a Tribunal consisting of three Commissioners was made on 21 January 2026. This oral hearing took place on 15 April 2026. We thank both Mr Allamby and Ms Patterson for their helpful oral and written submissions. Before considering those submissions, we remind ourselves of the relevant legislative provisions.

The legislative framework for PIP

17. PIP was established by Article 82 of the Welfare Reform (NI) Order 2015. It consists of a daily living component and a mobility component. These components may be payable to claimants whose ability to carry out daily living activities or mobility activities is limited, or severely limited, by either their physical or mental condition. The Personal Independence Payment Regulations (NI) 2016 (SR 2016/217) ('the 2016 Regulations') set out the detailed requirements for satisfying the above conditions.

18. The 2016 Regulations provide for points to be awarded when a descriptor set out in schedule 1, part 2 (daily living activities table) or schedule 1, part 3 (mobility activities table) is satisfied. Subject to other conditions of entitlement, in each of the components a claimant who obtains a score of at least 8 points will be awarded the standard rate of that component, while a claimant who obtains a score of 12 points (or more) will be awarded the enhanced rate of that component.

19. Additionally, regulation 4 of the 2016 Regulations provides for certain other overarching parameters for the assessment of daily living and mobility activities, as follows:

4.—(1) For the purposes of Article 82(2) and Article 83 or, as the case may be, 84 whether C has limited or severely limited ability to carry out daily living or mobility activities, as a result of C’s physical or mental condition, is to be determined on the basis of an assessment taking account of relevant medical evidence.

(2) C’s ability to carry out an activity is to be assessed—

(a) on the basis of C’s ability whilst wearing or using any aid or appliance which C normally wears or uses; or

(b) as if C were wearing or using any aid or appliance which C could reasonably be expected to wear or use.

(3) Where C’s ability to carry out an activity is assessed, C is to be assessed as satisfying a descriptor only if C can do so—

(a) safely;

(b) to an acceptable standard;

(c) repeatedly; and

(d) within a reasonable time period.

(4) Where C has been assessed as having severely limited ability to carry out activities, C is not to be treated as also having limited ability in relation to the same activities.

(5) In this regulation—

“reasonable time period” means no more than twice as long as the maximum period that a person without a physical or mental condition which limits that person’s ability to carry out the activity in question would normally take to complete that activity;

“repeatedly” means as often as the activity being assessed is reasonably required to be completed; and

“safely” means in a manner unlikely to cause harm to C or to another person, either during or after completion of the activity.

20. The descriptors for daily living activity 4 (washing and bathing) are set out in schedule 1, part 2 and provide as follows:

Washing and Bathing

4. a. Can wash and bathe unaided	0
b. Needs to use an aid or appliance to be able to wash or bathe.	2
c. Needs supervision or prompting to be able to wash or bathe	2
d. Needs assistance to be able to wash either their hair or body below the waist.	2
e. Needs assistance to be able to get in or out of a bath or shower.	3

- f. Needs assistance to be able to wash their body between the shoulders and waist. 4
- g. Cannot wash and bathe at all and needs another period to wash their entire body. 8

21. The terminology in the activity 4 descriptors is subject to further definitions in the 2016 Regulations.

22. The interpretation section (regulation 2(1)) includes the following relevant definitions:

“aid or appliance”—

(a) means any device which improves, provides or replaces C’s impaired physical or mental function; and

(b) includes a prosthesis;

...

“C” means a person who has made a claim for or, as the case may be, is entitled to personal independence payment.”

23. Part 1 of schedule 1 to the 2016 Regulations provides:

“assistance” means physical intervention by another person and does not include speech;

...

“bathe” includes get into or out of an unadapted bath or shower;

...

“prompting” means reminding, encouraging or explaining by another person;

...

“supervision” means the continuous presence of another person for the purpose of ensuring C’s safety;

...

“unaided” means without—

(a) the use of an aid or appliance; or

(b) supervision, prompting or assistance;

24. Notwithstanding this proliferation of statutory definitions, it is noteworthy that the adjective “unadapted” (in the context of a bath or shower) is not defined in the legislation.

Relevant case law

25. We were referred to four authorities in the case law.

26. The first was *SP v Secretary of State for Work and Pensions (PIP)* [2016] UKUT 190 (AAC); [2016] AACR 43. In applying the parallel Great Britain legislation, Upper Tribunal Judge

Rowley held as follows (Ms Walker, referred to in this passage, was the Secretary of State's representative):

Unadapted bath or shower?

17. There is no express indication in descriptor 4e as to whether the assessment should be of a claimant's ability to get in or out of an unadapted bath or shower.

18. The version of the descriptors which appears in the Social Security (Personal Independence Payment) Regulations 2013 (SI 2013/377) was not that which was originally drafted. The activity in the draft immediately preceding the regulations was headed "bathing and grooming," and the concomitant descriptor to what is now 4e was in these terms: "needs assistance to bathe". Following consultation, the structure and title of the activity and its descriptors were changed to the way in which they appear in the Regulations. In particular, the word "bathe" does not appear in descriptor 4e.

19. That history may serve to explain why "bathe" is defined in Schedule 1 as: "includes get into or out of an unadapted bath or shower;" but there no reference in descriptor 4e as to whether the bath or shower is an unadapted one. Rather, the descriptor simply asserts that claimant must need assistance to be able to get in or out of "a" bath or shower.

20. Be that as it may, Ms Walker submits that, in line with the spirit of the activity, the bath or shower referred to in descriptor 4e must be an unadapted one. It is, she says, clear from the description of the activity and definition of "bathe" that the activity in general is assessing the actions involved in a standard bathroom.

21. Adopting a purposive approach, I accept Ms. Walker's submission. A claimant's functional abilities should be considered in relation to whether they need assistance to be able to get in or out of an unadapted bath or shower.

22. In passing, I note that my conclusion is again consistent with the DWP's guidance document, referred to above, which expressly makes it clear that descriptor 4e is intended to apply to the use of a standard bath or shower.

What if the claimant has an adapted bath or shower?

23. How should a decision-maker or tribunal approach a case in which a claimant has an adapted bath or shower? For obvious reasons, the presence and use of such bathroom furniture may well be an indication that the claimant's lack of functional ability means that they need assistance to be able to get in or out of a bath or shower. But it does not necessarily follow that the presence of, and use by, the claimant of an adapted bath or shower will always mean that the claimant will satisfy descriptor 4e. After all, a claimant may choose to have an adapted bath or shower installed simply to make it easier for them to get in or out of it, but their functional limitation is not such they reasonably need it. Or, as in this case, the adapted bath or shower may have been installed by a previous occupier of the claimant's home. It is, therefore, incumbent on a tribunal to explore the reasons why a claimant has the adapted bath or shower, and what, if any, its link is to their lack of functional ability.

24. Such issues will have a bearing on the issue which the tribunal will have to decide. That question is, in my judgment, whether a claimant who has an adapted bath or shower needs assistance to be able to get in or out of an unadapted bath or shower. I have concluded that this is the appropriate question for two main reasons.

25. First, I bear in mind that a personal independence payment (PIP) assessment focuses on the functions involved in getting in or out of an unadapted bath or shower, and on the claimant's ability to perform those functions. It was, surely, Parliament's intention that the nature of the assessment for PIP must be the same for all claimants.

26. Secondly, an analogy may be drawn with the circumstances envisaged by Upper Tribunal Judge Jacobs in *PE v Secretary of State for Work and Pensions (PIP)* [2015] UKUT 309 (AAC); [2016] AACR 10 where, in the context of activity 6 ("dressing and undressing") he said that "the limitations on what clothing a claimant can cope with cannot be used to lower [the] standard. For example: a claimant who cannot manage buttons or laces cannot be tested by reference to their ability to dress in clothes fastened by Velcro. That would mean that the more disabled the claimant is in respect of an activity, the more difficult it would be to satisfy the descriptors."

27. Similarly, in my judgment, a claimant who is unable safely to get in or out of an unadapted bath or shower should not be tested by reference to their ability safely to get in or out of an adapted one which they reasonably need, for that, too, would mean that the greater the functional limitation, the harder it would be to come within descriptor 4e.

28. I accordingly conclude that a tribunal should measure a claimant who has an adapted bath or shower against a hypothetical test of an unadapted one.

Summary

29. Pulling together what I have said above, when considering whether a claimant satisfies descriptor 4e, a tribunal must decide whether he or she needs assistance to be able to get in or out of a bath or shower. The need for assistance to get in or out of only one of these will do. Of course, the questions must be asked through the prism of regulation 4(2A). The issue of safety (regulation 4(2A)(a) and 4(4)(a)), in particular, may be relevant.

30. Whether or not the claimant satisfies descriptor 4e must be determined by reference to an unadapted bath or shower.

31. If a claimant in fact has and uses an adapted bath or shower, questions should be asked as to the reasons why he or she does so. Installation following an occupational therapy assessment may, self-evidently, be a powerful indicator.

27. The second decision was *DR v Secretary of State for Work and Pensions (PIP)* [2018] UKUT 209 (AAC). We were referred to the following passage in Judge Lane's decision:

27. Activity 4 - Washing and bathing: The appellant stated expressly in his CQ that he had a walk-in shower and said so again at the hearing (p135). The Tribunal was entitled to accept that that was true. The Tribunal nevertheless fell into error in its construction of this activity, though the error is immaterial.

28. Judge Rowley decided in *SP v SSWP* [2017] UKUT 0190 that, in construing the scope of descriptor 4e, the word 'or' was disjunctive. She also decided that the test was whether the claimant could get in and out of an unadapted bath, in other words, an old-fashioned bath with a shower attachment of some sort over it. So, it is necessary to be able to get in and out of the bath, whether to bathe or shower. The Tribunal therefore fell into error by considering only the type of bathing equipment that the claimant actually had, that is to say, a walk-in shower.

29. In this case, however, the Tribunal considered that the appellant had difficulties with falls because of his balance and required an aid. Presumably this would be a rail, which the appellant said he had acquired, and a mat, which he had also acquired. Since then, he was 'okay' (p135) to get in and out of the shower safely. A rail and a mat would obviate safety issues with a bath as well.

30. This leaves the question of whether the appellant could get in and out of the bath without the assistance of another person. The Tribunal did not consider this problem because it confined itself to the problems of a walk-in shower. If it had considered the problem, the obvious answer to the appellant's problem would be that, if a rail was not enough, a bath board or bath stool would be a standard solution. In other words, another form of aid. It is far from clear that he would need the assistance of another person, but even if he did, he would only have been entitled to one more point under 4e. He would still fall far short of the minimum qualifying number of points for the daily living component.

31. I cannot see that the amount of time it took to get in and out of the bath would have made any difference since it was accepted that he needed an aid anyway.

28. The third decision, and the only authority cited from this jurisdiction, was *DMcK v Department for Communities (PIP)* [2022] NICom 17. Applying *SP v Secretary of State for Work and Pensions*, the Chief Commissioner identified the Appeal Tribunal's error of law in that case as follows:

The error of law

29. As was noted in the statement of reasons, the appellant's representative had prepared a written submission and provided additional medical evidence to the appeal tribunal. In the written submission, the representative made reference to specific activities from Part 2 of Schedule 1 to the 2016 Regulations. There is no discrete reference to activity 4. Nonetheless, the appeal tribunal, in line with its inquisitorial role, decided to adduce evidence from the appellant about activity 4. As the extract from the record of proceedings set out above demonstrates, the questioning centred on the washing and bathing facilities which the appellant used on a daily basis i.e. his shower adapted with a seat and subsequently with a rail. The appeal tribunal was aware that the appellant had a separate bath because that is mentioned in the report of the assessment undertaken by the health care professional. Having commenced the process of adducing evidence relevant to activity 4, the appeal tribunal was mandated, by the principles set out in *SP*, to consider the use of both a shower and a bath. To repeat, it is clear that the primary focus was on the shower rather than the bath. Further, the appeal tribunal was obliged, again by the principles in *SP*, to consider, as Judge Rowley put it in paragraph 21 — 'a claimant's functional abilities ... in relation to whether they need assistance to be able to get in or out of an unadapted bath or shower' and in paragraph 28 'I accordingly conclude that a tribunal should measure a claimant who has an adapted bath or shower against a hypothetical test of an unadapted one.' The appeal tribunal's focus on the adapted shower alone, and failure to consider functional ability to get in or out of an unadapted bath or shower, renders its decision as being in error of law. The error is a material one as had the appeal tribunal considered the potential application of descriptor (e) of activity 4 in the affirmative, then that would have resulted in the award of one further point, which, when added to the points already awarded, would have taken the appellant's score to the threshold for entitlement to the daily living component at the enhanced rate.

29. Finally, we were taken to *BC v Secretary of State for Work and Pensions (PIP)* [2024] UKUT 450 (AAC) and in particular the following passage:

Aids and Unadapted Bath or Shower

53. To put it shortly the Respondent's submission is that an 'aid' cannot adapt a bath for the purposes of activity 4b. As observed by the Respondent there is no definition in the regulations of what 'unadapted' means. I can see the attraction in that submission given the task in question is whether a person needs an aid to get into and out of an 'unadapted bath'. However, whether a specific aid, when employed, consequently modifies a bath or shower, thus adapting that standard bath is a question of fact. Some aids may adapt the bath, and some may not.

54. However, the fact that an aid has the result of adapting a bath is immaterial to the assessment of activity 4 descriptors. The starting point for descriptor task 4b is that the bath is unadapted, what then follows is the question whether the PIP claimant needs an aid to get into and out of that bath. If the claimant needs an aid to get into and out of the bath he is entitled to 2 points. The fact that the introduction of the aid, as a matter of fact, has the result of adapting the bath, is inconsequential for the purposes of assessing 4b in the light of the approach as set out at the beginning of this paragraph.

55. The descriptors for activity 4 are in ascending order of need. It is only necessary to consider whether a person requires supervision, prompting or assistance to get into and out of a bath, activity 4c and 4e respectively, if the claimant is unable to do so with either an aid or appliance (4b). For reasons provided above, the starting position is the bath is unadapted and even if an individual requires an aid in conjunction with supervision, prompting or assistance to be able to carry out the descriptor tasks, the same staged process applies for the purposes of assessing 4c and 4e (see above).

The parties' submissions

The claimant's submissions

30. The claimant's submission, as made in the (amended) skeleton argument of 30 March 2026 and orally at the hearing, was essentially that whether a claimant satisfies descriptor 4(e) must be determined by reference to an *unadapted* bath or shower. In this case it was submitted the Tribunal made its decision by "failing to consider the Appellant's ability to use an unadapted bath i.e. [it had considered a bath with] ... a bath board and rails" (paragraph 10) and that the Tribunal's decision was therefore in error of law.

31. Mr Allamby submitted that a grab rail and a bath board were aids and appliances for the purpose of activity 4. This represents an evolution of the claimant's position from the leave hearing, where it was suggested the bath board and rails had the effect of changing the bath from an unadapted to an adapted bath. In short, the claimant now argues the Tribunal applied the wrong test in relation to descriptor 4(e) by considering the claimant's ability to get in or out of her bath as it was *in situ* i.e. with a bath board and rails rather than a bath without these aids or appliances. As such, it is submitted the wrong test was applied by the Tribunal and this is a material error of law – given that if the claimant was awarded 3 points for this descriptor (as opposed to the 2 points she had been awarded for descriptor 4(c)), she would qualify for the enhanced (as opposed to the standard) rate of the daily living component of PIP.

32. In support of this proposition, the claimant refers to paragraph 20 of the Tribunal's written reasons, specifically:

“The Tribunal found that while the appellant may prefer to have a ‘relaxing bath’ that nevertheless with the benefit of aids she would be able to get into and out of a bath or shower and lower herself into the bath and be able to wash or bathe safely and then exit the bath without assistance from another person for the majority of the time.”

33. Mr Allamby refers to *SP v SSWP (PIP)* [2016] UKUT 190 (AAC); [2016] AACR 43 in particular paragraphs 21, 24 and 28 which conclude as follows:

“21...A claimant’s functional abilities should be considered in relation to whether they need assistance to be able to get in or out of an unadapted bath or shower...”

24... That question is, in my judgment, whether a claimant who has an adapted bath or shower needs assistance to be able to get in or out of an unadapted bath or shower...

28... I accordingly conclude that a tribunal should measure a claimant who has an unadapted bath or shower against a hypothetical test of an adapted one.”

34. Mr Allamby correctly points out this analysis was endorsed by the Chief Commissioner in this jurisdiction in *DMcK v DfC (PIP)* [2022] NlCom 17.

The respondent’s submissions

35. There is significant common ground between the parties in this appeal. Both agree the correct test to be applied in respect of descriptor 4(e) is the (hypothetical) test of the *unadapted* bath, regardless of the claimant’s personal bathing arrangements.

36. Ms Patterson for the Department, in response to the previous arguments raised by the claimant, clearly set out the Department’s view that aids and appliances (specifically rails and a bath board in this case) do not change a bath from an *unadapted* to an *adapted* bath. Her view accords with that of Upper Tribunal Judge Rowley in *SP v SSWP (PIP)* that a structural change, such as a walk-in bath, (paragraph 32) is needed in order to constitute an *adapted* bath. Given the shift in the claimant’s position referred to above, this issue was not substantively argued at the appeal hearing.

37. Where the parties differ is on the issue of whether the Tribunal applied the correct test in respect of descriptor 4(e). The Department submit the Tribunal applied the correct test, i.e. the *unadapted* bath test. Ms Patterson submits, based on a consideration of the inquisitorial discussion in the record of proceedings, considered alongside the written reasons, that the Tribunal applied the correct test, came to a sustainable conclusion based on the evidence and produced adequate written reasons to explain its decision.

Analysis

The findings of fact

38. The Tribunal was satisfied that the claimant “[n]eeds to use an aid or appliance to be able to wash or bathe” where the term bathe “includes get into or out of an unadapted bath or shower” (descriptor 4(b) of Schedule 1, Part 2 of the 2016 Regulations). This descriptor is worth 2 points, although the Tribunal ultimately awarded the claimant 2 points in respect of descriptor 4 (c), on the basis she required prompting to perform this activity. This was also worth 2 points and the claimant’s award of the standard rate of the Daily Living component, conferred by the Department’s decision of 10 August 2022, was confirmed by the Tribunal’s decision of 8 May 2024.

39. To establish eligibility for the Daily Living component of PIP, the Tribunal must be satisfied that the claimant's ability to carry out the activities within Schedule 1, Part 2 of the 2016 Regulations is limited (or severely limited) by her physical or mental health condition within the required period (Art 83 of the 2015 Order). The starting point is therefore to make findings of fact on what medical conditions, if any, were in operation for the claimant during the required period (see Arts 86 of the 2015 Order; Regulation 14 of the 2016 Regulations).

40. At paragraph 6 of the statement of reasons (SOR), the Tribunal stated that the claimant had listed her health conditions in her claim form as "...diabetes, depression and anxiety, right knee injury, eczema, degenerated macular disease and hysteroscopy." It continued, at paragraph 13 of the SOR, to make findings of fact in connection with a number of musculoskeletal conditions, including the right knee injury, which had the potential to impact upon the claimant's ability to wash and bathe:

"The Appellant had arthritis in left knee which she advised the assessor did not have a functional impact and the Tribunal agreed. The Appellant had fallen in her kitchen and sustained an injury to her right elbow and was seen by a practice nurse but was not sent for X-rays or specialist services and advised to take over the counter pain medication. The Appellant described pain which was worse first thing in the morning and eased throughout the day. The Tribunal did not consider this elbow injury to have any functional impact for the relevant period. The Appellant sustained a right knee injury diagnosed in 2014 by her GP following an accident. While the GP referred the Appellant for physiotherapy the Tribunal could not find evidence the Appellant had been referred to or had specialist input from either orthopaedics or rheumatology or the pain clinic. The Appellant was on low level pain relief. The Appellant did not have mobility aids. The tribunal considered this condition would cause some functional restriction in some of the activities and scored accordingly."

41. The Tribunal therefore made clear findings that the claimant's left knee and right elbow had no functional impact upon her during the required period of her claim for PIP. It determined that her 2014 right knee injury, which had required neither specialist input beyond referral to the physio nor mobility aids, and was managed with low level pain relief, "... would cause some functional restriction in some of the activities and scored accordingly" (paragraph 13 of the SOR).

42. Having determined that the claimant's right knee injury was the relevant medical condition, the Tribunal must then establish how this limited (or severely limited) the claimant's ability to carry out the daily living activities in question. In this case, the Tribunal was concerned with the activity of washing and bathing (descriptor 4). This required the Tribunal to consider the effects of the right knee injury upon the claimant, and what functional restrictions, if any, that those effects, whether physical and/or mental, imposed upon her ability to wash and bathe. The ability to carry out all activities, including washing and bathing, must be considered in accordance with Regulation 4(3) of the 2016 Regulations i.e., whether the claimant can wash and bathe (a) safely, (b) to an acceptable standard, (c) repeatedly, and (d) within a reasonable time period.

43. The Tribunal assessed the evidence regarding the effects of the claimant's right elbow injury at paragraph 20 of the SOR, as follows:

"[I]n the ARI claim form the Appellant stated difficulty getting in and out of the shower/bath and was more unsteady and would lose balance easily and used a grab rail and was unable to have a bath due to knee injury... The 2022 HCP report notes the Appellant holds onto basin getting into the bath and has difficulty getting in and out of

bath due to knee injury, can shower herself independently maybe every other day, no motivation. In her evidence to the Tribunal the Appellant confirmed she had an OT assessment and had grab rails fitted and then a bath board but still had difficulty getting in and out of the bath and couldn't sit in the bath and had slipped a few times. The Tribunal acknowledged a GP consultation on 31st July 2017 when the Appellant reported at an OT assessment, she required assistance to get out of the bath but was told by staff the hoist was not working and they were not allowed to assist her... The Tribunal noted on 13th July 2017 a bath lifter assessment was carried out by an OT who noted the Appellant able to lift her legs into the bath and lower herself into the bath, The equipment was rejected as an option by the Appellant as it would require her to have the bath pre run and not allow her to add water when sitting in the bath... On 20th December 2022 a further OT assessment was carried out and the Appellant was observed to transfer on and off bath shower board independently using rails to assist... apart from a referral to physio the Appellant had not been referred to a specialist either orthopaedics or rheumatology or the pain clinic. The Appellant was on minimal pain relief. There was no evidence of falls apart from the fall which occurred two weeks before the 2022 HCP assessment..."

44. It concluded, “[t]he Tribunal did not find the medical management of the Appellant’s condition supported the level of restriction claimed... The Tribunal found that while the Appellant may prefer to have a “relaxing” bath that nevertheless with the benefit of aids she would be able to get into and out of a bath or shower and lower herself into the bath and be able to wash or bathe safely and then exit the bath without assistance from another person for the majority of the time” (paragraph 20 of the SOR).

45. The level of restriction claimed on the claimant’s claim form, as a result of her knee injury, was that she could not get into and out of the bath as she was unsteady and lost balance, so she used a grab rail. This level of restriction was put slightly differently by the claimant in oral evidence when she said that despite the grab rail and bath board, she still had difficulty getting in and out of the bath, with resulting slips. She continued that she needed “assistance to have a bath and to sit in the bath” (see Record of Proceedings dated 8 May 2024 at page 9). This was coupled with an assertion, in 2017, that she needed assistance to get in and out of the bath. The Tribunal concluded that the claimant could get into and out of a bath or shower safely, and without assistance, with the use of aids for the majority of the time. This conclusion suggests that the Tribunal did in fact accept her initial claim in the claim form, despite its statement to the contrary. Or perhaps the Tribunal meant that it did not accept her oral evidence which appeared to assert that the grab rail and bath board, as aids, were insufficient to overcome her difficulties getting into and out of the bath. The Tribunal went no further than this in its findings, its reasons or its conclusions in respect of getting into and out of the bath.

46. Mr Allamby correctly highlighted during the hearing, that the starting point for the Tribunal is the claimant’s functional impairments arising from her medical conditions. The question therefore arises: what did the Tribunal find to be the claimant’s difficulties with getting into and out of the bath? This question was posed during the hearing and neither party was able to identify any such findings.

47. In her claim form, the claimant states that her difficulties were due to feeling unsteady and losing her balance. While the Tribunal recited relevant details from the claimant’s medical evidence, including the fact that the claimant was seen to be able to lift her legs into the bath and lower herself into it during an OT assessment, along with contradictory claims that she could not get into the bath without assistance, it did not make any findings of fact as to the specific difficulties experienced by the claimant as a result of her knee injury. Despite listing a number of

contradictory evidential points, the Tribunal failed to state which of the functional restrictions (if any) that it found to exist as a matter of fact. It is unclear, for example, whether the Tribunal accepted that the claimant's knee injury made her unsteady on her feet as she had originally claimed, and that this is the reason for her use of a grab rail. Furthermore, one of the evidential matters outlined in paragraph 20 was that the claimant stated she required assistance to get out of the bath. The Tribunal did not explore this with the claimant in oral evidence, for example to establish what assistance she claimed was required, and whether this was still the case despite the availability of the grab rail and/or bath board.

48. In the absence of such definitive findings, coupled with the finding that the medical management of the right knee injury does not support the "level of restriction claimed", it is difficult to understand why the Tribunal considered that the claimant required the bath board and/or grab rail as aids at all. Paragraph 20, when read as a whole, suggests that the Tribunal simply adopted the Department's award of points without adequately analysing the underlying reasoning or reaching its own determination on whether the claimant could wash and bathe independently or otherwise, based on the evidence before it.

49. The Tribunal omitted to establish the functional limitations arising from the right knee injury which it found to be the disabling physical injury of relevance to this element of the claimant's PIP claim. By failing to do so, the Tribunal was unable to truly establish whether the aids available to the claimant were a device which "improves, provides or replaces [the claimant's] impaired physical... function" (Regulation 2(1) of the 2016 Regulations) caused by the right knee injury and whether they were "reasonably required" to overcome such restrictions. Additionally, we agree with Ms Patterson on behalf of the Department, that the Tribunal ought to have explored whether a higher scoring descriptor might apply in the claimant's circumstances (*AI v Secretary of State for Work and Pensions (PIP)*: [2016] UKUT 322 (AAC), confirmed in *AC v Department for Communities (PIP)* [2019] NCom 32). This is so in light of the claimant's reference to requiring assistance to get into and out of the bath, even with the aids and adaptations already in place.

50. For these reasons, we find that the Tribunal materially erred in law by failing to resolve conflicts in the evidence and failing to make sufficient findings of fact on the functional limitations experienced by the claimant as a result of her accepted right knee injury. The Tribunal also failed to make findings of fact on whether the claimant reasonably required assistance to get into and out of the bath, as identified within the medical evidence available to it. By failing to do so, the Tribunal's conclusion that the claimant reasonably requires aids to wash and bathe is inadequately reasoned and is made in error of law.

The test for washing and bathing

51. The main thrust of Mr Allamby's argument at oral hearing was that the Tribunal applied the wrong test in respect of the claimant's ability to wash and bathe in the context of Activity 4. He specifically pointed to paragraph 20 of the SOR (which has been referred to above but which we include here for ease of reference) in particular the sentence: "*The Tribunal found that while the Appellant may prefer to have a 'relaxing' bath that nevertheless with the benefit of aids she would be able to get into and out of a bath or shower and lower herself into the bath and be able to wash or bathe safely and then exit the bath without assistance from another person for the majority of the time*".

52. Mr Allamby argues the Tribunal applied the wrong test because it considered the claimant's ability to get in and out of the bath with the benefit of aids. He submits this is incorrect and what the Tribunal should have considered was the claimant's ability to get in and out of an (unadapted)

bath without the use of aids or indeed assistance from another person. We are persuaded Mr Allamby is correct in this submission. It seems to us the Tribunal have conflated or at least appeared in its SOR to composite descriptors 4 (b) and 4(e). It has effectively “run together” the tests for needing to use an aid and appliance in 4(b) and needing assistance to be able to get in or out of a bath or shower in 4(e). While it may be the case the Tribunal had in mind the claimant using an unadapted bath and this was simply a convenient way to summarise or “run through” the descriptors in issue, this legislative precis articulated in the SOR means we cannot be sure the correct test was applied in respect of either descriptor. For this reason the Tribunal was in error of law both in respect of the application of the test for washing and bathing and in terms of the adequacy of its reasons. This error is material given the claimant had 11 points for Daily Living and the award of a further point (in respect of descriptor 4 (e) for example) would mean she would have been awarded the enhanced rate of this component rather than the standard rate.

Aid v Adapted

53. At the leave hearing the claimant’s representative argued the aids used by the claimant had the effect of adapting the bath. At the appeal hearing, as referred to above, the claimant’s submissions had evolved somewhat with the central argument being the Tribunal had applied the wrong test in respect of washing and bathing, as referred to above. As such this issue was not substantively argued before us and given our views in paragraphs 50 and 52 above, we are not required to determine this issue. It may however be helpful if we comment briefly on this matter.

54. Firstly, we consider the decision of Upper Tribunal Judge Rowley in *SP v SSWP (PIP)* [2016] UKUT 190 (AAC) remains representative of the law in Northern Ireland. We endorse her view that “*a Tribunal should measure a claimant who has an adapted bath or shower against a hypothetical test of an unadapted one*”. The parties also concurred on this point.

55. In terms of what constitutes an adapted bath the respondent has argued aids and adapted baths are quite distinct and that, as noted by Upper Tribunal Judge Jacobs, at paragraph 2 of the reported decision [2016] AACR 44 (*CW v SSWP (PIP)* [2016] UKUT 197 (AAC)) “*An aid must help to overcome consequences of the impairment of the function that is involved in carrying out an activity and is limited by the claimant’s condition. To satisfy an aid or appliance descriptor, the claimant must need an aid to assist in respect of an impairment of a function involved in the activity*”.

56. Ms Patterson argues this quite distinct from an adapted bath which she submits requires a structural change to the bath (or shower). She relies on part on the comments of Upper Tribunal Judge Rowley at paragraph 32 of *SP v SSWP* specifically:

“The evidence before the tribunal was that the claimant used a walk-in bath with a shower above. This would, of course, fall into the category of an adapted bath.”

57. Ms Patterson submits aids assist a person with a limitation in performing the activities (of bathing and showering) but have no implications for the structure of the bath or shower. They are specific to the person using them whereas an adapted bath requires structural alteration and is generic in application in that it assists everyone.

58. This is an attractive submission both in terms of its logic and its alignment with the views of Upper Tribunal Judge Rowley. It also provides considerable clarity in its application. We also note the statutory scheme specifically sets out a number of PIP descriptors which involve the use of aids across multiple activities. It would seem to negate the purpose of, or at least make those

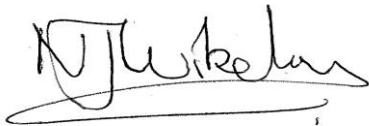
particular descriptors redundant, if an aid or aids were to have the effect of, for example, transforming an unadapted bath into an adapted bath. We note in *BC v SSWP* the view was taken that it was a matter of fact and degree in each case whether an aid or aids had the effect of adapting a bath. We consider this would be a very high bar to reach in terms of an aid or aids adapting a bath in the absence of structural alteration to the bath.

Consideration of the descriptors - the ascending order of need

59. *BC v SSWP* quite rightly observed the descriptors in activity 4 Washing and Bathing are in ascending order of need. It is important, however the Tribunal are alive to the possibility that a claimant may satisfy more than one descriptor and as part of its inquisitorial duty it must make the necessary findings of fact to determine which descriptor applies in each case, considering the totality of the evidence. Such an eventuality is envisaged and provided for in the statutory scheme by regulation 7 of the Personal Independence Payment Regulations (Northern Ireland) 2016. This approach to scoring has been approved in the case law as referred to at paragraph 49 above.



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(Authorised for issue on 28 July 2026)